

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CARLOS GARZA, JR.,
§
Petitioner,
§
v.
§
2:16-CV-27
WILLIAM STEPHENS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
§
Respondant.

REPORT AND RECOMMENDATION
TO DISMISS COMPLAINT

On February 19, 2016, petitioner filed a motion seeking to extend the time in which to file a federal habeas corpus petition challenging his Potter County conviction. The court denied the motion to extend time (ECF No. 4) but instructed petitioner that the case would remain open until April 1, 2016, in order for him to submit a federal habeas corpus petition. When no petition was filed, the court entered an order on April 6, 2016, to show cause (ECF No. 5) as to why the case should not be dismissed. On April 15, 2016, petitioner filed a Motion to Answer Order (ECF No. 6). In his response, petitioner states he “was unaware he had a time line to prepare-nor a statutory one (1) year limitation period [which] is if I’m correct on ‘November 2016.’ Petitioner believes this is enough time to prepare the 2254 and show this honorable court he did not have a fair trial, was given an [ineffective] counsel” Motion to Answer Order at 1. He continues on to state facts he could potentially allege in a petition and asks the court to “please be patient . . . [and give] him the chance to make his case.” *Id.* at 2.

It is unclear if petitioner is asserting that he has ample time left to file a federal habeas corpus petition or if he is asking for an extension of time to file his federal habeas corpus petition. If petitioner is stating he has sufficient time left to file his habeas corpus petition, then the case should be dismissed without prejudice. If petitioner is requesting an extension of time, he has not complied with the requirements of a writ of habeas corpus under 28 U.S.C. § 2254, as detailed in the undersigned's Order Denying Petitioner's Motion for Extension of Time to File (ECF No. 4). As discussed in the order, a federal habeas action brought under the AEDPA only begins with the filing of a pleading that seeks affirmative relief on the merits. *See Order Denying Petitioner's Motion for Extension of Time to File at 1–2* (ECF No. 4). None of petitioner's filings comply with this requirement, and the case should be dismissed without prejudice.

Accordingly, it is the recommendation of the undersigned United States Magistrate Judge that this case be dismissed without prejudice.

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 25th day of April 2016.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

* **NOTICE OF RIGHT TO OBJECT** *

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P.

5(b)(2)(E). Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); see also Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1), as recognized in *ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).